APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,928	11/18/2003	James J. Crow	MTV0018US	4254

33031 7590 12/26/2007 CAMPBELL STEPHENSON LLP 11401 CENTURY OAKS TERRACE BLDG. H, SUITE 250 AUSTIN, TX 78758	**EXAMINER** KEEFER, MICHAEL E

ART UNIT	PAPER NUMBER
2154	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/715,928	CROW ET AL.
	Examiner	Art Unit	
	Michael E. Keefer	2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *29 October 2007*.

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-14 and 19-31* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-14 and 19-31* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☒ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some *   c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

1.   This Office Action is responsive to the Amendment filed 10/29/2007.

Specification

2.   The amendment filed 10/29/2007 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The deletion of carrier waves and digital communication signals is new matter by deletion. The Examiner suggests that in order to overcome the rejection of claims 19-22 and 28-31 under 35 U.S.C. 101 that Applicant amend this paragraph to specifically state that "transmission type media" are a different set of items than the claimed "computer readable medium" (For example, "Examples of computer readable media are floppy disks and CD-ROM, examples of transmission type media are digital and analog communication links.").

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 102

1.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2.   Claims 1, 4, 11-12, 19-20, 23-24, and 27-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Aronberg et al. (US 5933647), hereafter Aronberg.

Regarding **claims 1, 11, 19, 23, and 27-31**, Aronberg discloses:

A method comprising:

in response to a first request on behalf of a requesting instance of a

plurality of instances of an application, providing a criterion for identifying a set of

instances of the plurality of instances to receive first data and a location of the

first data; and (Col. 4, lines 28-56 disclose a profile which is downloaded to an

agent which contains a criterion and a location (i.e. filename) of data)

providing the first data to the requesting instance when a second request

is made on behalf of the requesting instance for the first data upon determining

that the requesting instance satisfies the criterion. (Col. 4 lines 56-61 disclose

that if the agent meets the requirements of the profile it then requests the

distribution (i.e. data) to be downloaded to the agent.)

Regarding **claims 4, 12, 20, and 24 and as applied to claims 1, 11, 19, 23, and**

27-31, Aronberg discloses:

receiving a message indicating whether the first data was received. (It is

inherent in the TCP/IP networking protocol that an ACK packet is sent if data is

received properly.)

3.   Claims 1,4, 8-12, 14, 19-20, 22-24, and 26-31 are rejected under 35

U.S.C. 102(b) as being anticipated by Sadowsky (US 5790796).

Regarding **claims 1, 11, 19, 23, and 27-31**, Sadowsky discloses:

A method comprising:

in response to a first request on behalf of a requesting instance of a plurality of

instances of an application, providing a criterion for identifying a set of instances of

the plurality of instances to receive first data and a location of the first data; and

(Abstract lines 6-8 disclose sending a master object to a client including fields that

indicate what files are available to the client)

> providing the first data to the requesting instance when a second request
is made on behalf of the requesting instance for the first data upon determining
that the requesting instance satisfies the criterion. (Abstract lines 12-17 disclose
the client requesting specific files from the master object)

Regarding **claims 4, 12, 20, and 24 and as applied to claims 1, 11, 19, and 23**,

Sadowsky discloses:

receiving a message indicating whether the first data was received. (It is inherent

in the TCP/IP networking protocol that an ACK packet is sent if data is received

properly.)

Regarding **claims 9-10, 14, 22, and 26 and as applied to claims 1, 11, 19, and

23**, Sadowsky discloses:

an index file comprises the criterion and the location; and (the master object is an

index file)

the providing the criterion and the location comprises providing the index file. (the

master object is provided to the client)

Regarding **claim 8 and as applied to claim 1**, Sadowsky discloses:

the first data comprise one of:

a first executable program for each of the set of instances of the

application,

a second executable program to install a third executable program for

each of the set of instances of the application, and

a component of the application for each of the set of instances of the

application. (Col. 6 lines 30-44 disclose that the data may be software, data,

update, or the like, which includes executable programs)

Claim Rejections - 35 USC § 103

4.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set
forth in section 102 of this title, if the differences between the subject matter sought to be patented and
the prior art are such that the subject matter as a whole would have been obvious at the time the
invention was made to a person having ordinary skill in the art to which said subject matter pertains.
Patentability shall not be negatived by the manner in which the invention was made.

5.   Claims 5, 13, 21, and 25 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Sadowsky as applied to claims 1, 4, 11-12, 19, and 23 above, and

further in view of Meizlik et al. (US 6112323), hereafter Meizlik.

Sadowsky discloses all the limitations of claims 5, 13, 17, 21, and 25 except for receiving a negative acknowledgement that the
data was received and re-transmitting the data.

The general concept of transmitting a NAK to data that was not properly

received, and the server retransmitting data that receives a NAK is well-known in

the art as taught by Meizlik. (Col. 3, lines 46-49 teach the use of a NAK message

being sent to an improperly received message and the sender then re-

transmitting the data.)

It would have been obvious to one of ordinary skill in the art at the time of the

invention to combine Sadowsky and the general concept of transmitting a NAK to

data that was not properly received, and the server retransmitting data that

receives a NAK as taught by Meizlik in order to increase the reliability of data

transport.

6.   Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Sadowsky as applied to claim 1 above, and further in view of Foster (US 6986134).

   Sadowsky discloses all the limitations of claim 7 except for the data being an announcement.

The general concept of distributing an announcement over the network is well

known in the art as taught by Foster. (Abstract, Foster teaches that a package

may not only be an executable update, but may also be a document (i.e. an

announcement))

It would have been obvious to one of ordinary skill in the art at the time of the

invention to combine Sadowsky with the general concept of distributing an

announcement over the network as taught by Foster in order to allow only users

of a specific program to know there is a problem with a program prior to having a

patch or fix available.

7.   Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Sadowsky as applied to claim 1 above, and further in view of Hansen (US 5838907).

Sadowsky discloses all the limitations of claims 6 except that the data transmitted

is configuration data.

The general concept of transmitting configuration data over the network via files is well known in the art as taught by Hansen. (Abstract "configuring the device by uploading the configuration file thereto.")

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Sadowsky with the general concept of transmitting configuration data over the network via files as taught by Hansen in order to configure a network device from a central location. (Col. 2 lines 31-36)

8.   Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sadowsky as applied to claim 1 above, and further in view of Ma et al. (US 5920725), hereafter Ma.

Sadowsky discloses all the limitations of claim 2 except for providing the index file when the index file has been updated.

The general concept of updating old files with new versions when they are changed is well known in the art as taught by Ma. (Abstract lines 12-17 disclose a server updating objects on a client after they have been altered on the server)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Sadowsky with the general concept of updating old files with new versions when they are changed as taught by Ma in order to allow the user to see new updates to the index as quickly as possible.

9.   Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sadowsky as applied to claim 1 above, and further in view of Ma and in further view of Canter et al. (US 2004/0003390), hereafter Canter.

Sadowsky discloses all the limitations of claim 3 except for providing the index file when the index file has been updated and only checking for updates of the index after a certain period of time since the second request, as specified in the second request.

The general concept of updating old files with new versions when they are changed is well known in the art as taught by Ma. (Abstract lines 12-17 disclose a server updating objects on a client after they have been altered on the server)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Sadowsky with the general concept of updating old files with new versions when they are changed as taught by Ma in order to allow the user to see new updates to the index as quickly as possible.

Sadowsky and Ma teach all the limitations of claim 3 except for only checking for updates of the index after a certain period of time since the second request, as specified in the second request.

The general concept of waiting a certain amount of time before polling to see if updates have occurred is well known in the art as well as the concept of exchanging more than one piece of data in a message as taught by Canter. ([0024] teaches a user requesting a certain interval for updates, as well as this request also being a request for data from the sever.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Sadowsky and Ma with the general concept of waiting a certain amount of time before polling to see if updates have occurred as well as the concept of exchanging more than one piece of data in a message as taught by Canter in order to increase the efficiency of the system.

Response to Arguments

10.   Applicant's arguments filed 10/29/2007 have been fully considered but they are

not persuasive.

Summary of Applicant's Arguments

A. Applicant argues that Aronberg does not disclose the limitations of claim 1.

1. The profile of Aronberg does not contain a criterion.

2. The profile of Aronberg does not contain a location.

B. Applicant argues that Sadowsky does not disclose the limitations of claim 1.

1. Applicant cannot find a teaching for fair suggestion of providing a

criterion or a location of first data.

2. Applicant notes the abstract is silent as to whether the client selects the

file based upon criterion provided by the server.

Response to Applicant's Arguments

A. 1. A. 2. In applicant's arguments, page 10, lines 14-15, Applicant states: "If the

distribution is appropriate for a particular agent, that agent pulls down the distribution,

i.e., the agent performs the actual distribution." (which is taken from Aronberg, Col. 4

lines 55-57) In order for this statement to be true, the agent must have two facts in hand

a) a way to determine if the distribution is appropriate and b) the location to pull the

distribution down from. In fact, the profile, which contains the condition for distribution, is

evaluated by the agent. The condition is inherently communicated to the agent, or else

the agent would not have the knowledge of the condition to evaluate. Likewise, the

profile must inherently have the location of the distribution, or else it would be impossible for the agent to know where to pull the distribution from.

B. 1. and B. 2. Note Figure 3, the master object that is provided. The master ᴠobject contains packages, which contain a file name (which is a location) and at least one criterion. See Column 5 lines 33-54 which discloses choosing an update based off of a criterion in the individual package from the master object.

Conclusion

11.   Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael E. Keefer whose telephone number is (571)

270-1591. The examiner can normally be reached on Monday through Friday 9am-

5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Nathan Flynn can be reached on (571) 272-1915. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

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MEK 12/14/2007